

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD,)	C.A. No. 04-11193NG
Plaintiff)	
)	PLAINTIFF SHAWN DRUMGOLD'S
v.)	SECOND AMENDED MOTION TO
)	ENLARGE TIME TO SERVE SUMMONS
TIMOTHY CALLAHAN, MICKY ROACH,)	AND COMPLAINT
PAUL MURPHY, RICHARD WALSH, and)		
THE CITY OF BOSTON,)	
Defendants)	

Now comes the Plaintiff Shawn Drumgold in the above-captioned proceeding and respectfully requests that this Honorable Court enlarge the time in which he must serve the Summons and Complaint in this matter upon the defendant police officers Timothy Callahan, Paul Murphy, and Richard Walsh, from December 1, 2004 to January 15, 2005. As grounds therefor, the Plaintiff states as follows:

1. That his attorneys, Rosemary Curran Scapicchio and Stephen Hrones, their investigators, and staff, in good faith and with due diligence, have been unable to locate the Defendant police officers in order to serve them with the Summons and Complaint in this matter;

2. That based on the information which the Plaintiff's attorneys have to date, they now are informed and believe that Defendant police officer Timothy Callahan currently is deployed as a member of the military reserve to Iraq and/or Afghanistan; and, that based on earlier information, was believed to have been returned to the United States and to his job as Night-Shift Commander at Boston Police Dept/Dist E-13, 3345 Washington St, Jamaica Plain, MA 02130, where he was served by United States First-Class Mail with a Summons, Complaint, Notice Of

Lawsuit And Request For Waiver Of Service Of Summons, and Waiver Of Service Of Summons on or about August 13, 2004, all of which correspondence has gone unanswered;

3. That Defendant police officer Paul Murphy is believed to be deceased since sometime in 2001; and, that probate records have not yet been located to determine if there is an executor of Defendant Murphy's estate, if probate remains open, or when and if probate may have been or was closed, in order to be able to serve said executor on behalf of Defendant Murphy;

4. That Defendant police officer Richard Walsh is believed to be retired since sometime in 2003; and that, information as to his current residence and/or other whereabouts (*i.e.*, subsequent employment, vacation home, *etc.*,) have not yet been located;

5. That Hugh R Curran, an attorney with Bonner Kiernan Trebach & Crociata in Boston, Massachusetts, stated in a letter to attorney Hrones dated November 5, 2004, that "I expect that our office will be retained to represent Richard Walsh in this matter. However, there are a few procedural steps that must be completed before I can officially and formally represent Detective Richard Walsh. At that time, I will accept service on his behalf." To date, those "few procedural steps" have not yet been taken, but, according to attorney Curran, they are a formality and his representation of Defendant Walsh is possible in the near future;

6. That the Defendants City of Boston and Francis M Roache have been served and the returns have been filed in the District Court;

7. That the Plaintiff alleges in his Complaint that he was wrongfully convicted of first-degree murder and sentenced to life in prison without parole in October 1989; and, that the Plaintiff was released from prison after spending over 15 years incarcerated, when the Suffolk County District Attorney entered a *nolle prosequi* on November 6, 2003;

8. That Plaintiff's request for an enlargement of time is both reasonable and necessary in order for the Plaintiff's counsel to determine where the Defendant police officers are exactly and/or where they may be served, or whom may be served on their behalf; and, that an enlargement of time is in the interests of justice so that justice may be served for the Plaintiff who allegedly was wrongfully convicted and imprisoned and who is entitled to redress from *all* who were involved in the alleged wrongful conviction and incarceration; and,

10. That John P Roache, co-counsel to Francis M "Micky" Roach and the City of Boston, assents to this Motion; and, that Susan Weise was telephoned, a message was left for her, and, as of this filing, had not yet returned the call.

WHEREFORE, the Plaintiff respectfully prays that this Honorable Court enlarge the time in which the Defendant police officers must be served with the Summons and Complaint in this matter, from December 1, 2004 to January 15, 2005.

Respectfully submitted
The Plaintiff Shawn Drumgold,
By his attorneys,

//S//Rosemary Curran Scapicchio

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I, Stephen Hrones, hereby certify that, on November 29, 2004, I prepared this Motion for filing in the District Court. Our office legal assistant conferred with Hugh R Curran who does

not yet formally represent Defendant Walsh although such representation is possible in the near future; Defendant Callahan has not yet been personally served as he cannot be located and, therefore, is not yet represented by counsel with whom to confer; and, Defendant Murphy, believed to be deceased and whose estate has not yet been personally served as the facts of probate have not yet been ascertained, is not yet represented by counsel with whom to confer. I further certify that I am filing this Motion in good faith and after having made such efforts and attempts with due diligence to locate these individuals and/or individuals who may be contacted on their behalf, to no avail.

//S//Stephen Hrones
Stephen Hrones

CERTIFICATE OF SERVICE

I, Stephen Hrones, hereby certify that on this 30th day of November, 2004, I have served a copy of the foregoing PLAINTIFF SHAWN DRUMGOLD'S AMENDED MOTION TO ENLARGE TIME TO SERVE SUMMONS AND COMPLAINT via United States, First-Class Mail, postage prepaid where unable to do so electronically, as follows: Patrick J Donnelly, Esq., John P Roache, Esq., HOGAN ROACHE & MALONE, 66 Long Wharf, Boston, MA 02110; Susan Weise, Chief of Litigatn, Asst Corp Counsl, Civil Rights Div/Law Dept, City Hall, Rm 615, Boston, MA 02201; *courtesy copy* to Hugh R Curran, Esq., BONNER KIERNAN TREBACH & CROCIATA, One Liberty Square, Boston, MA 02109.

//S//Stephen Hrones
Stephen Hrones